



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALEJANDRO OROZCO-MADRIGAL,  
Movant,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

Case No.: 16-cv-1673-BEN  
15-cr-215-BEN

**ORDER DENYING MOTION TO  
VACATE, SET ASIDE, OR  
CORRECT A SENTENCE UNDER  
28 U.S.C. § 2255**

Movant Alejandro Orozco-Madrigal filed a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255. Respondent, the United States opposes the motion. For the reasons set forth below, the Court denies the motion.

**BACKGROUND**

In 2015, Orozco-Madrigal was charged with the crime of illegal reentry into the United States. He pleaded guilty and was sentenced. The sentence was 51 months in prison. As part of his plea agreement and during the sentencing, Orozco-Madrigal waived his right to appeal or collaterally attack his sentence. In June 2016, he filed the instant motion for collateral relief under § 2255.

Under § 2255, a movant is entitled to relief if the sentence: (1) was imposed in violation of the Constitution or the laws of the United States; (2) was given by a court without jurisdiction to do so; (3) was in excess of the maximum sentence authorized by law; or (4) is otherwise subject to collateral attack. Title 28 U.S.C. § 2255.

**DISCUSSION**

The motion fails on two grounds. *First*, Movant validly waived his right to collaterally attack his sentence. The record discloses no issues as to the voluntariness of

1 the plea and waiver. *Second*, contrary to his contentions, Movant's sentence was not  
2 unconstitutionally enhanced under *Johnson v. United States*, 135 S. Ct. 2551 (2015). In  
3 *Johnson*, the Supreme Court considered language in the Armed Career Criminal Act  
4 ("ACCA"). The Supreme Court examined the definition of "violent felony" and held that  
5 a portion of that definition known as the "residual clause" is void for vagueness.  
6 However, Movant was not sentenced under the residual clause of the violent felony  
7 definition of the ACCA. Rather, he was sentenced pursuant to 18 U.S.C. § 3553 as  
8 guided by the U.S. Sentencing Guidelines § 2L1.2. Reading the motion liberally, when it  
9 was still an open question, Movant challenged the U.S. Sentencing Guidelines as  
10 unconstitutionally vague based on the same reasoning as *Johnson*. However, since the  
11 motion was filed, the Supreme Court has rejected the argument in *Beckles v. United*  
12 *States*, 137 S. Ct. 886 (2017), holding that the federal Sentencing Guidelines are not  
13 subject to vagueness challenges under the Due Process Clause.

14 Therefore, the motion is denied because: (1) Movant validly waived his right to  
15 collateral attack; and (2) the motion is without merit.

### 16 CONCLUSION

17 The Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

18 A court may issue a certificate of appealability where the movant has made a  
19 "substantial showing of the denial of a constitutional right," and reasonable jurists could  
20 debate whether the motion should have been resolved differently, or that the issues  
21 presented deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S.  
22 322, 335 (2003). This Court finds that Movant has not made the necessary showing. A  
23 certificate of appealability is therefore **DENIED**.

24 **IT IS SO ORDERED.**

25  
26 Dated: \_\_\_\_\_

4/08/2019

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HON. ROGER T. BENITEZ  
United States District Court Judge